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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,792	07/22/2003	Aldo Marra	126.01	7448

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EXAMINER	
ESTREMSKY, GARY WAYNE	

ART UNIT	PAPER NUMBER
3676	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/624,792	MARRA ET AL.	
	Examiner	Art Unit	
	Gary Estremsky	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *7-13* is/are allowed.

6)☒ Claim(s) *1 and 3-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 6 is objected to because of the following informalities:

Recitation of "said first end" lacks clear antecedent basis in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what the scope and meaning of "placed directly adjacent to said bolt and said strike" should include. The term "adjacent" is broad, literally interpreted as 'nearby' and does not require contact or any particular distance, whereby the limitation literally means *directly nearby* and is considered vague, if not internally contradictory (somewhat like *almost* taller for example). Additionally, due to the grammatical structure of the claim, it is not clear if the limitation should be interpreted narrowly as meaning '*directly nearby* the bolt and *directly nearby* the strike' or more broadly as '*directly nearby* the (bolt and striker)'. It's been held that claims in a pending application should be given their broadest reasonable interpretation.. In re Pearson, 181 USPQ 641 (CCPA 1974).

To expedite Prosecution, if an amendment after Final is submitted for purpose of Appeal, an amendment that replaces "magnet placed directly adjacent to said bolt and said strike" with –magnet is positioned to be in contact with said bolt and in contact with said strike—would be entered, if submitted alone.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,770,451 to Souza.

Souza '451 teaches Applicant's claim limitations including ; a "strike palte" – 18, "having at least one aperture" – including 136,138 as shown in Fig 8, a "magnet" – 142. The magnet is shown to be placed "directly adjacent to said bolt and strike" as recited in that it is shown to be connected directly to part 136,138. As written, the limitation reads directly on the illustrated arrangement of Souza '451. However, Souza '451 does not teach more specific structure of –magnet is positioned to be in contact with said bolt and in contact with said strike—.

As regards claim 3, the portion of 18 projecting beyond the door jamb when installed is graspable and reads on broad limitation of "handle".

As regards claim 6, a "pair of apertures" (with screws) are shown on the right ("first") end of striker plate as shown in Fig 10 for example.

3. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by England Pat. No. 278,523 to Witts.

Witts '523 teaches Applicant's claim limitations including: a "strike plate" – lowermost (as shown) horizontal portion of E, a "bolt" – I,a "magnet" – including B.

As regards claim 3, one or both flanges of E shown to include countersunk mounting screwholes read on "handle" limitation which amounts to little more than intended use where examiner points out that the claim does not require the device mounted in combination with a door jamb whereby one of ordinary skill in the art would readily recognize the flanges as being an appropriate structure for grasping the magnet assembly. The law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789.

As regards claim 6, the lower end of E reads on "first end" wherein a "pair of apertures" is illustrated.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,770,451 to Souza in view of U.S. Pat. No. 3,731,965 to Adkinson.

The following grounds of rejection is presented in order to expedite prosecution as much as possible. Assuming arguendo that limitation of "pair of apertures" were interpreted as requiring a two apertures for receiving the bolt, it is recognized that Souza '451 discloses a single aperture receiving the bolt. However, Adkinson '965 teaches that it is well known in the art to provide a "pair of apertures" as shown on the face of the Patent. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the plate (18) of Souza '451 with a pair of apertures as taught by Adkinson '965 in order to provide it with symmetry as stated at col 2; line 41 for redundancy and reversibility as would be recognized by one of ordinary skill in the art.

Allowable Subject Matter

6. Claims 7-13 are allowed.

7. As regards claim 11 for example, the prior art does not fairly teach all individual steps, as claimed.

Response to Arguments

8. Applicant's arguments have been fully considered but they are not entirely persuasive and in some cases, moot due to new grounds of rejection.

The actual language and meaning of the claims are broader than argued by Applicant for the reasons noted in the body of the prior art rejections above whereby Applicant's arguments are not entirely persuasive. The examiner has suggested a potential amendment that is consistent with Applicant's arguments and overcomes some of the prior art rejections. However, while such amendment could be entered after Final Office Action if submitted alone, it does not appear that it would overcome all prior art rejections.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Estremsky
Primary Examiner
Art Unit 3676